92-

Supreme Court, U.S.
FILED
MAR 1 1993
OFFICE OF THE CLERK

No._____

IN THE SUPREME COURT OF THE UNITED STATES

October Term 1992

Robert Dordies, Petitioner,	)
vs.	)
People of the State of Illinois, Respondent.	)

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

PETITION FOR WRIT OF CERTIORARI

WILLIAM J. STEVENS
Attorney for Petitioner
135 South La Salle Street
Suite 1407
Chicago, IL 60603
(312) 845-2900

34 pp

QUESTIONS PRESENTED FOR REVIEW

1. Does the inference that petitioner intended to distribute cocaine drawn by the Illinois Court that possession of 2.01 grams of cocaine, $868 in cash and a beeper where the petitioner was employed as an auto mechanic and was arrested near a shopping center violate due process of law as guaranteed by 14th Amendment to the U.S.Constitution and conflict with the due process interpretations adopted by the federal courts in Turner v. United States 396 U.S. 398, 423 (1970); United States v. Franklin 728 F2d 994 (8th Cir. 1984); United States v. Olvera 523 F2d 1252 (5th Cir. 1975)?

2. Is a 12 year sentence for possession of 2.01 grams of cocaine with intent to distribute based on a reckless disregard of the fact that petitioner successfully

completed parole and was never adjudicated a parole violator a violation of due process of law?

3. Was petitioner's conviction procured with the knowing use of false testimony in violation of due process of law where substantial evidence contradicted the officer who testified against petitioner and 5 witnesses including the officer who assisted in petitioner's arrest testified that they did not see petitioner throw any object (the cocaine) to the ground?

PARTIES

1. Robert Dordies was defendant in the Circuit Court of Cook County, Illinois, Criminal Division, appellant in the Illinois Appellate Court, First District, petitioner for Leave to Appeal in the Illinois Supreme Court and petitioner for Writ of Certiorari in this Court.

2. The People of the State of Illinois was plaintiff in the Circuit Court of Cook County, Illinois, Criminal Division, appellee in the Illinois Appellate Court, First District, respondent on Petition for Leave to Appeal in the Illinois Supreme Court and respondent in this Court.

TABLE OF CONTENTS

QUESTIONS PRESENTED 2

PARTIES 4

TABLE OF CONTENTS 5

TABLE OF AUTHORITIES 6

REPORTS OF OPINIONS 7

JURISDICTION 8

TEXT OF 14th AMENDMENT 9

STATEMENT OF THE CASE 10

REASONS FOR GRANTING THE WRIT . . .14

CONCLUSION 18

JUDGMENTS AND OPINIONS BELOW . . . 19

TABLE OF AUTHORITIES

Alcort v. Texas 355 U.S. 28 (1957) . 17

Mooney v. Holohan 294 U.S. 103 (1935) . 17

Napue v. Illinois 360 U.S. 264 (1959) . 17

Townsed v. Burke 334 U.S. 736, 739-742 (1948) 16

Turner v. United States 396 U.S. 398, 423 (1970) 14

United States v. Franklin 728 F 2d 994 (8th Cir. 1984) 14

United States v. Olvera 523 F 2d 1252 (5th Cir. 1975) 15

DECISIONS BELOW

The order of the Illinois Appellate Court affirming petitioner's conviction and the order of the Illinois Supreme Court denying leave to appeal are unpublished and the tables reporting those dispositions have yet to be published. The orders are reproduced in the appendix to this petition.

JURISDICTION

On August 28, 1992 the Illinois Appellate Court entered an order affirming petitioner's conviction and sentence. On September 16, 1992 petitioner filed a timely petition for leave to appeal in the Illinois Supreme Court. On December 2, 1992 the Illinois Supreme Court denied leave to appeal. Petitioner seeks to invoke this court's jurisdiction under 28 USC Sec. 1293 by filing this petition by mail on February 24, 1993 and within 90 days of the judgment of the Illinois Supreme Court as required by rule 13.1 of the Court.

CONSTITUTIONAL PROVISION INVOLVED

AMENDMENT XIV

...; nor shall any State deprive any person of life, liberty, or property, without due process of law; ....

STATEMENT OF THE CASE

Petitioner was among 16 to 18 men in a breezeway connecting a shopping center and high rise apartment buildings in the vicinity of Dearborn and Federal Streets in Chicago. Chicago Police Officers David Baez and Rick Diaz responded to a call reporting men loitering at 3920 State Street. (R. 9-11) Baez used the public address system on his squad car to order the men to disperse. (R. 11) All of the men except 2, Robert Dordies, the petitioner, and Bryant Reed left the area. (R. 11-13) Officer Baez arrested Reed for disorderly conduct. (R.14) While Officer Baez was hand cuffing Reed, he claims that he saw petitioner drop a bag behind him (R. 14). Officer Rick Diaz was watching the petitioner and did not see

the petitioner or anyone else drop the packet Officer Baez allegedly recovered. (R. 162) Four occurrence witnesses James Winters, Debra Branner, Donna Siller and Dwane Evans did not see the petitioner drop anything and did not see Officer Baez recover anything. (R. 52, 68-9, 80, 88, 106, 135). Officer Baez stated that he went to arrest Reed and the petitioner for disorderly conduct as they were the only 2 remaining after the order to disperse and that he saw no narcotics transaction and no narcotics paraphernalia. (R. 27)

Upon arresting the petitioner Officer Baez found that the petitioner had $868 and a beeper. (R.17-18)

Officer Baez inventoried a clear plastic bag which contained 8 smaller packets with yellowish powder in them (R. 15, 18, 19) The total weight of the packets was 2.01 grams and the powder was cocaine (R. 36)

Petitioner was 32 years of age at the time of the alleged offense. (R. 208) He worked as an automobile mechanic and supported his 3 children. (R 206) Petitioner had prior convictions for murder and armed robbery and had served time concurrently for those offenses from 1976 to 1982. He remained at liberty without incident for 9 years and 6 months. He successfully completed parole without being adjudicated a parole violator. (R. 206)

In a bench trial the Circuit Court of Cook County found him guilty of

possession of cocaine with intent to deliver cocaine and sentenced petitioner to 12 years. On appeal he attacked his conviction and sentence on due process grounds. The Appellate Court affirmed. The Illinois Supreme Court denied leave to appeal on December 2, 1992.

REASONS FOR GRANTING THE WRIT

I.

Due Process of Law is offended when the Illinois Court infers an intent to distribute cocaine from the possession of 2.01 grams of cocaine, $868 in cash and a beeper. Sinister inferences should not be drawn from the cash and the beeper where the petitioner was employed as an auto mechanic and his arrest occurred near a shopping center. The Federal courts have refused to infer an intent to distribute narcotics from evidence of possession of small quantities of drugs. In Turner v. United States 396 U.S. 398, 423 (1970) 14.68 grams of cocaine was insufficient to support an inference of possession with intent to deliver. In United States v. Franklin 728 F 2d 994 (8th

Cir. 1984) 35 grams of 42% pure cocaine was insufficient to support an inference of possession with intent to deliver. In United States v. Olvera 523 F 2d 1252 (5th Cir. 1975) 2 grams of cocaine was insufficient to support an inference of possession with intent to deliver.

The inference that petitioner intended to deliver cocaine drawn here by the Illinois courts, offends the due process clause of the 14th Amendment and is contrary to the interpretation of federal law adopted by the federal courts.

II.

The Circuit Court and the Appellate Court heavily relied on an assertion that the petitioner was returned to prison as a parole violator in 1984 as an aggravating factor in imposing and affirming the 12 year sentence in this case. The record is plain that petitioner was never adjudicated a parole violator and was never returned to prison as a parole violator. (R. 206) After his release from prison he remained at liberty for 9 years 6 months without incident. The Illinois courts' reckless disregard for the actual state of the record in order to rationalize its sentence violates fundamental due process. Townsed v. Burke 334 U.S. 736, 739-742 (1948).

III.

The case that petitioner possessed cocaine rested entirely on the uncorroborated testimony of Officer David Baez to the effect that petitioner threw a bag on the ground and that Baez recovered that bag. The prosecution knew that Baez was lying when his fellow officer Rick Diaz testified that he was watching the petitioner that he did not see petitioner throw anything to the ground. Once Officer Baez's testimony was supported by four additional witnesses, the prosecution was under a due process duty to halt the prosecution based on planted dope and the lies of an unscrupulous officer. Napue v. Illinois 360 U.S. 264 (1959); Mooney v. Holohan 294 U.S. 103 (1935); Alcort v. Texas 355 U.S. 28 (1957).

BEST AVAILABLE COPY

CONCLUSION

For the foregoing reasons petitioner asks the court to grant certiorari to the Supreme Court of Illinois to review the petitioner's conviction and sentence.

Respectfully submitted,

William J. Stevens

WILLIAM J. STEVENS
135 S. LaSalle Street
Suite 1407
Chicago, IL 60603
(312) 845-2900

August 28, 1992

No. 1-91-2060

IN THE

APPELLATE COURT OF ILLINOIS

FIRST JUDICIAL DISTRICT

People of the State of Illinois

Plaintiff-Appellee

vs.

Robert Dordies

Defendant-Appellee

ORDER

Following a bench trial in the circuit court of Cook County, defendant was convicted of possession of a controlled substance with intent to deliver. (Ill. Rev. Stat. 1989, ch 56 1/2, par. 1401(a)(2)) and sentenced to 12 years imprisonment. Defendant raises these issues on appeal: (1) the State failed to prove him guilty beyond a reasonable doubt; (2) it was reversible

error to allow the State to introduce evidence of a defense witness' gang affiliation; and (3) his sentence is excessive.

Police officer David Baez testified that about 5:15 p.m. on April 28, 1989, he and his partner received a radio call about men loitering at 3920 South State Street in Chicago, Illinois. He proceeded to the location and observed a large group of men standing in a breezeway that connects a shopping mall and a housing project. He ordered the men to disperse, and everyone left except for defendant and Bryant Reed. Defendant appeared to be signaling everyone to return to the breezeway, so Baez decided to arrest defendant and Reed for disorderly conduct. Baez blocked the breezeway with his police vehicle, then exited the car. Reed

walked towards Baez and attempted to get in his way, so Baez hand cuffed him. Then Baez saw defendant drop a plastic bag onto the ground. He arrested defendant and recovered the plastic bag which contained several smaller clear bags of white-yellowish powder. Defendant also had a mobile beeper and $868 in currency in his possession.

The parties stipulated that if Gloria Grindle, a police chemist, were called to testify, she would state that she analyzed the substance in the eight clear plastic bags recovered from defendant and determined that it was 2.01 grams of cocaine.

Donna Siller, a long-time acquaintance of defendant, testified that she lived in a 13-floor apartment overlooking the shopping center. About 5 p.m., she saw two policemen drive into

the breezeway, stop the vehicle, and then chase "some guy" toward a building. An officer walked back towards the shopping center and was "tussling" with defendant. Then the officer pulled out a gun and arrested defendant. She did not see defendant drop any package upon the ground.

James Winters, who did not know defendant, testified that on April 28, 1989, he was employed at the Main Street Game Room in the shopping mall. About 5 p.m. two police officers had a suspect confined in the squad vehicle and they were walking on the sidewalk in the shopping mall. The police stopped by a grocery store and requested several individuals to leave the area. The police got back into the vehicle, then used the vehicle to prevent defendant and Reed from leaving the breezeway.

When an officer grabbed defendant, they "were scuffling." Winters did not see defendant drop anything on the ground.

Dwayne Evans testified that he was walking out of the grocery store in the shopping mall when he saw a policeman chasing "a few other members" through the breezeway. The officer struck defendant with a stick, pulled out a gun, and arrested him. He did not see defendant drop anything on the ground. Evans denied being a member of the Black Gangster Disciples or having known defendant previously.

Debra Branner testified that she was going into the grocery store when she saw a police vehicle blocking the breezeway and a police officer running towards the building. The officer approached the defendant, there was a "scuffle," the officer pulled out his

gun and hand cuffed defendant. She did not see defendant drop anything on the ground. She had seen defendant in the neighborhood, but they were not friends.

Police officer Enrique Diaz testified in rebuttal that he accompanied Baez on April 28, 1989. Baez ordered the men in the breezeway to disperse, and everyone complied except defendant and Reed. Baez stopped the police vehicle in the breezeway, exited and hand cuffed Reed. Baez called for assistance because defendant was signaling the other men to return to the area. Baez saw defendant walking away and ordered him to stop. When defendant failed to respond, Baez hand cuffed him, then Baez walked to the location where he had been standing and retrieved a plastic bag. There was no one else in the police vehicle besides the two

officers prior to entering the breezeway. Baez "pushed [defendant] a little bit to get him toward the wall" to handcuff him, but Baez did not hit him with a police baton. There was no one else in the breezeway besides the two police officers, defendant and Reed at the time of the arrest.

Police officer Michael Rooks testified in rebuttal that he and his partner, Sam Pollack, provided additional assistance that day. Reed was placed in their squad vehicle and taken to the police station.

The State then called police officer Sandra LaPorta as a rebuttal witness and defendant objected. The State argued that the purpose of LaPorta's testimony would be to impeach Dwayne Evens' statement that he was not a member of the Black Gangster Disciples

and to show bias of the defense witness. The trial court overruled defendant's objection and allowed the witness to testify.

Police officer Sandra LaPorta testified that in the early morning hours of September 22, 1990, she had a conversation with Dwayne Evans. Evans admitted that he was a member of the Black Gangster Disciples.

The State then sought to call police officer McCullan as a witness to testify about his knowledge regarding gangs. The trial court sustained defendant's objection.

Initially, we consider whether the State failed to prove defendant guilty. Defendant claims that the evidence was not sufficient to support his conviction for possession of a controlled substance with intent to deliver, and that his

conviction should be reduced to the lesser offense of possession of a controlled substance. When reviewing the sufficiency of the evidence on appeal, the relevant question is whether, after reviewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. People v. Young (1989), 128 Ill. 2d 1, 49, 538 N.E. 2d 461.

We have examined the record in the present case and find that the evidence establishes that defendant had 2.01 grams of cocaine on his person, which supports a finding of possession. We also find that the mobile beeper and $868 in currency found in defendant's possession establishes an intent to deliver the controlled substance. In

People v. Crenshaw (1991), 202 Ill. App. 3rd 432, 549 N.E. 2d 1051, we held that 11.3 grams of cocaine divided into 22 packets was insufficient to support an inference of intent to deliver because there was no evidence that defendant had placed the substance in the packets, the amount of currency in defendant's possession was never determined, and the police had not observed a transaction that would have been indicative of a drug delivery or sale. However in the present case, it was determined that defendant had $868 in cash in his possession which could be indicative of a drug transaction. The trial court also inferred an intent to deliver because defendant possessed a mobile beeper which could have been used for drug transactions. Therefore, a rational trier of fact could have

concluded that defendant was guilty of possession of a controlled substance with intent to deliver.

We next consider whether the gang-related evidence was properly admitted for the limited purpose of impeaching a defense witness. Defendant argues that the States's rebuttal evidence regarding the gang affiliation of a defense witness was collateral to the determination of his guilt or innocence and therefore constitutes reversible error.

Illinois courts have often held that questions regarding gang affiliations are proper when the State has sought to introduce evidence of defendant's gang activities in spite of the risk of prejudice to defendant. (People v. Gonzales (1984), 104 Ill. 2d 332, 228, 472 N.E. 2d 417.) In the

present case, defendant did not object when on cross examination Dwayne Evans denied a gang affiliation. While the trial court did allow Officer LaPorta to impeach Evans testimony denying gang affiliations, it would not allow a police gang specialist to testify as a witness. Therefore , we do not agree with defendant's contention that whatever probative value the evidence had was outweighed by is prejudicial effect. It is the function of the trial court to weigh the probative value and prejudicial affect of evidence in determining whether it should be admitted at trial. (People v. Gonzalez (1991), 142 Ill. 2d 481, 489, 568 N.E. 2d 864.) We believe that the trial judge acted properly in allowing Evans's testimony and subsequent rebuttal testimony by the police officer and then

refusing to allow the testimony of a police gang specialist. We conclude that the gang-related evidence was admissable for the purpose of impeaching a defense witness.

Finally, defendant argues that the trial court abused its discretion by sentencing him to an excessive term of 12 years' imprisonment. Defendant contends that the trial court failed to give adequate consideration to his rehabilitative potential.

The trial court is not required to give greater weight to the possibility of rehabilitation than to the seriousness of the offense at the sentencing hearing. (People v. Allen (1990), 202 Ill. App. 3rd 487, 494. 559 N.E. 2d 1145.) It is not necessary for the trial court to articulate or assign a value to each fact upon which it

relies in determining defendant's sentence. (People v. Allen, 202 Ill. App. 3rd at 494.) In the present case, we find that the trial court did consider the aggravating and mitigating factors, the seriousness of the offense, and the opportunity for the defendant's rehabilitation. Defendant had been convicted of murder and armed robbery in 1976 and sentenced to a term of 18 to 30 years' imprisonment. Moreover, defendant had been paroled and was returned to prison in 1984 for violation of parole. Under these particular circumstances of the case, we do not find that the trial court abused its discretion in sentencing defendant. And absent an abuse of discretion, the trial court's decision will not be disturbed. People v. Perruquet (1977), 68 Ill. 2d 149, 153, 368 N.E. 2d 882.

For the foregoing reasons, the judgment of the circuit court is affirmed. Pursuant to People v. Nicoile (1978), 71 Ill 2d 166, 374 N.E. 194, we grant the State's request and assess defendant $50 as costs for this appeal.

Judgment affirmed.

LORENZ, J. with MURRAY and GORDON, JJ. , concurring.

IN THE SUPREME COURT OF ILLINOIS

No. 74286

Robert Dordies.

Petitioner,

vs.

People of the State of Illinois,

Respondent.

ORDER

Petitioner's Petition for Leave to Appeal is DENIED.

Dated: December 2, 1992